

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

Amendment No. 3 to
Agreement for Purchase and
Sale of Real Property, in
substantially the form provided

12.28.16

Consent
Action
First Reading

Second Reading

Third Reading
Public Hearing
12.21.16 Briefing

COUNCIL BILL #

Originating Department

Contact Person

Phone Number

FOR AGENDA OF

Initialed by:

Department Head

CAA

Council President

Real Property

Mike Palacios

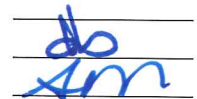
Tom Hingson

425-257-8938

425-257-8939

December 21, 2016

December 28, 2016



Location

3600 Smith
Avenue

Preceding Actions

Purchase and Sale Agreement (6/29/16)

Attachments

Amendment

Department(s) Approval

Real Property, Transit
Legal, Administration

Amount Budgeted	\$4,000,000.00 plus closing	
Expenditure Required	\$4,000,000.00 plus closing	Account Number(s): Fund 425
Budget Remaining		
Additional Required		

DETAILED SUMMARY STATEMENT:

On June 29, 2016, Council approved the purchase and sale agreement for the acquisition of the former Smith Street Mill site located at 3600 Smith Avenue, which is adjacent to and immediately south of the Everett Station. The site will be used for Transit operations with initial use as bus parking, allowing Transit to discontinue leasing space at 2911 California Avenue. The site will also provide a potential placeholder for the City to meet its obligation to Sound Transit for a future 100-space parking lot for Everett Station.

The attached draft amendment contains revisions to the purchase and sale agreement. The revisions will be addressed at the Council briefing on December 21, 2016. Council will also be provided with an updated amendment at the briefing.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign Amendment No. 3 to Agreement for Purchase and Sale of Real Property, in substantially the form provided.

AMENDMENT NO. 3

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

This Amendment No. 3 to the Agreement of Purchase and Sale of Real Property (this “**Amendment**”) is dated for reference purposes December 16, 2016, by and between the CITY OF EVERETT, a municipal corporation (“**Buyer**” or “**City**”), and SSLM PROPERTIES, LLC, a Washington limited liability company (“**Seller**”).

RECITALS

A. Buyer and Seller are parties to the Agreement of Purchase and Sale of Real Property dated on or about July 26, 2016, as amended by Amendment No. 1 dated October 10, 2016, and by Amendment No. 2 dated November 30, 2016 (as amended, the “**Agreement**”).

B. As set forth in this Amendment, the Buyer agrees that the Inspection Period contingency is satisfied.

The Seller and Buyer agree as follows:

1. Inspection Period. The Inspection Period contingency is satisfied.
2. Purchase Price. Section 2.2 is replaced with the following:

2.2 Purchase Price. The total purchase price for the property (the “**Purchase Price**”) shall be three million two hundred seventy eight thousand five hundred dollars (\$3,278,500.00), subject to the adjustments, if any, as provided for under this Agreement. For closing purposes, Seller and Buyer agree that no portion of the purchase price is allocated to personal property.

3. Environmental Escrow.

(a) Environmental Escrow. At Closing, \$200,000 of the Purchase Price shall remain in an escrow with the Title Company (“**Environmental Escrow**”). Any Title Company costs for the administration of the Environmental Escrow will be paid from the Environmental Escrow.

(b) Definition of Eligible Remediation Work. “**Eligible Remediation Work**” refers to (i) the environmental remediation work to be done on the

Property described in the Memorandum by Geoengineers dated December 2, 2016, attached as Exhibit A to this Amendment and (ii) any other Property environmental remediation as may be discovered as necessary during such work.

Regardless of the foregoing, the parties agree that Eligible Remediation Work in no event ever includes any of the following: (1) importing, placement or compaction of backfill (estimated in Memorandum Table 1 as \$270,000); (2) construction of an asphalt cap (estimated in Memorandum Table 1 as \$17,500); or (3) consultant costs for preparation of the Remedial Investigation, Feasibility Study and Cleanup Action Plan (estimated in Memorandum Table 1 as \$98,000).

(c) Withdrawal from Environmental Escrow. If Buyer incurs costs for Eligible Remediation Work (which may include without limitation costs of Buyer staff time, contractor costs and consultant costs, all in accordance with Buyer's usual procurement and contracting processes) in excess of \$721,500, then Buyer may deliver Environmental Escrow withdrawal requests to the Title Company for such excess in the following form:

The City hereby requests \$_____ from the Environmental Escrow established under the Agreement for Purchase and Sale of Real Property dated _____ between the City of Everett and SSLM Properties, LLC.

Upon Title Company receipt of such a withdrawal request, the Seller and Buyer hereby irrevocably instruct the Title Company to deliver the requested funds to Buyer. Seller waives any right to object to the Title Company's delivery of such payment to City; however, Seller does not waive any right it may have to bring an action in Snohomish County Superior Court contesting Buyer's entitlement to such payment and Buyer's right to retain such payment. In order to be effective, a Environmental Escrow withdrawal request must be delivered to the Title Company no later than November 30, 2017. The Buyer shall provide Seller reasonable back-up documentation for all Eligible Remediation Work promptly upon written request from Seller.

(d) Closing of Environmental Escrow Except for funds subject to a duly delivered Environmental Escrow withdrawal request, Seller and Buyer hereby irrevocably instruct the Title Company to deliver to Seller all funds remaining in the Environmental Escrow as of December 15, 2017.

3. No Other Changes/Counterparts. Except as amended by this Amendment, the Agreement remains in full force and effect. Capitalized terms have the same meaning as in the Agreement. This Amendment may be executed by with counterparts and/or by pdf signatures.

IN WITNESS WHEREOF, the undersigned have executed this Amendment on the dates below their respective signatures.

BUYER:

CITY OF EVERETT,
a Washington municipal corporation

By: _____

Name: Ray Stephanson

Title: Mayor

Approved as to form:

Attest:

City Attorney

City Clerk

SELLER:

SSLM PROPERTIES, LLC,
a Washington limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

GEOENGINEERS MEMORANDUM